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Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.480/Add.1.

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The meeting was called to order at 10.05 a.m.

DISCUSSION ON THE SITUATION OF THE OCCUPIED PALESTINIAN TERRITORY IN THE LIGHT OF ARTICLE 16 OF THE CONVENTION (agenda item 9)

1. The CHAIRMAN invited Mr. El Masry to present suggestions on the item.

2. Mr. EL MASRY recalled that the decision to place the item under consideration on the agenda for the present session had been taken by the Committee at the previous session. Since November 2000, the situation of the Palestinians in the occupied territories had deteriorated and hopes for peace stood to be irretrievably lost unless, as the Special Rapporteur on the Palestinian territories occupied by Israel had recommended, measures were taken to restore confidence. In that regard, the establishment of a human rights framework was indispensable. The Committee had a wealth of information, both from United Nations documents and from the reports of non-governmental organizations (NGOs), indicating flagrant breaches by Israel of various articles of the Convention, and not solely of article 16. He would confine his remarks to a number of practices gravely transgressing the provisions of that article. Referring, first and foremost, to the excessive use of force, he said that, according to the commission of inquiry set up by the Commission on Human Rights in October 2000, almost all of the victims had been hit by real bullets and rubber bullets - a misleading term since they were coated with a very thin layer of rubber. In February 2001, the commission of inquiry had placed the death toll at 311 Palestinians and 47 Israelis, and the number of wounded at 11,575 Palestinians and 466 Israelis. The number of Palestinian victims - a third of them children - had since nearly doubled. The commission of inquiry had found considerable evidence of indiscriminate firing at civilians and had concluded that the use of lethal weapons against demonstrators and the widespread destruction of homes and property along the settlement roads could not be considered proportionate to the circumstances. The International Federation of Women Lawyers and the International Commission of Jurists had indicated that tear gas and water cannons, shown to be effective in quickly dispersing violent demonstrations when necessary, had rarely been used. Since the beginning of the intifada, Israel had indiscriminately used against civilians a whole range of heavy weapons normally used only for military warfare, including tanks, helicopters and warships. The majority of Palestinian casualties had been hit in the upper part of the body, which suggested a clear intention to kill. Such conduct was unjustifiable, since the evidence suggested that the lives of Israeli soldiers had not been in danger. The Israeli forces also used high-velocity bullets that splintered on impact, demonstrating the intention to kill or to cause serious injury, and not merely to disperse demonstrators. Twenty-seven per cent of the Palestinians killed had been children under the age of 18. Israel claimed that the Palestinian authorities indoctrinated the children and then organized their participation in demonstrations. Did that justify killing them? While acknowledging that some children were likely to have been exposed to anti-Israeli propaganda, the commission of inquiry had emphasized that the demonstrations were substantially the result of the humiliation and frustration felt by children and their families after years of occupation.

3. Reports describing the suffering undergone by detained Palestinian children were indeed disturbing. According to Defence for Children International, over 300 Palestinian children were detained in Israeli prisons, in potentially life-threatening conditions. Reports indicated that children were tortured at the time of arrest, and during interrogation and imprisonment. The

Israeli authorities had thus far ignored appeals made by human rights organizations on behalf of such children. In the update to his mission report (E/CN.4/2001/30), the Special Rapporteur cited Israeli Military Order 132, which authorized the arrest and detention of Palestinian children aged 12 to 14. There were currently some 250 children between the ages of 14 and 17 in the Israeli prisons. Moreover, children were apparently imprisoned with adults, which contravened the provisions of several international instruments, among them the Convention against Torture.

4. As for the degrading and inhuman treatment to which the Palestinians had been subjected since the advent of the occupation, he would point out that the West Bank and Gaza represented 22 per cent of the Palestinian territory. The original inhabitants were cramped by the influx of refugees from the region that now constituted Israel. The bulk of the Palestinian population lived in that limited area. Flouting its obligations under the Fourth Geneva Convention, Israel had built 90 settlements, where 380,000 of its citizens lived. The presence of the settlements was aggravated by the daily discriminatory practices of the occupying power. Tellingly, Gaza was divided into two parts: the first, or 42 per cent of its territory, was reserved for 6,000 settlers, and the second, or 58 per cent of the territory, was inhabited by 1.2 million Palestinians. Most were refugees living in crowded camps with poor sanitary conditions. The settlers were protected by the Israeli military and exempted from the jurisdiction of the Palestinian courts. Restrictions on the movements of the Palestinian population generally took four forms: comprehensive closure of the occupied territories, including the so-called safe-passage zone between Gaza and the West Bank; internal closure imposed on towns and villages; curfews; and closure of international crossing points between the Palestinian territories and neighbouring countries. Israel had recently intensified its fragmentation of the occupied territories. In that regard, the Special Rapporteur had indicated that Israel had divided Gaza into four parts and the West Bank into 60 zones, digging trenches and erecting concrete barriers to restrict the movement of people and goods between the zones. The World Organization against Torture had observed that the internal closure of the territories resulted in the creation of isolated enclaves, in which the population lived under a virtual state of siege. Among many examples of tragic incidents caused by such circumstances, he cited the cases of two persons who had died because they had been unable to reach a hospital in time. Reports contained numerous examples of humiliation, ill-treatment and violence against Palestinian citizens at checkpoints. All such measures were clearly disproportionate to the security concerns of the Israeli settlers, whose illegal presence in the occupied territories had been denounced by the international community. Rather, such measures amounted to political retaliation constituting a form of collective punishment against the whole Palestinian population, and were a clear violation of article 16 of the Convention. The Special Rapporteur had also indicated that Israeli officers had admitted that the army was carrying out a policy of extrajudicial executions against Palestinians suspected of having committed attacks against Israeli settlers or soldiers. Thirteen persons had been ambushed and killed by fire from heavy weapons. The Special Rapporteur had denounced those killings as a grave violation of the Fourth Geneva Convention and of the principles of humanitarian law. The United Nations commission of inquiry had decided to pay special attention to those killings, because they had been officially acknowledged, promoted and condoned at the highest levels of the Israeli Government. The shooting of Dr. Thabet Ahmad Thabet, a high official in the Palestinian Ministry of Health, was a glaring instance of a political assassination. His widow had submitted a petition to the Israeli Supreme Court, which had been dismissed although the Israeli prosecutor had presented no evidence implicating the victim. Israel contended that the victims of targeted political assassinations were

combatants. However, according to the commission of inquiry, the victims had been dressed as civilians and had not been participating in hostilities at the time they were killed, and Israel had presented no evidence to back up its contention. In the absence of due process, a prompt and impartial investigation, prosecution of the perpetrators and compensation to the victims, those executions were surely violations of article 2, paragraph 2, and articles 12, 13, 14 and 16 of the Convention.

5. Attention must also be drawn to the suffering of the Palestinians as a result of the destruction of their houses and property. According to the Special Rapporteur, the homes of at least 173 families had been destroyed by Israeli forces between September 2000 and February 2001. The various types of collective punishment inflicted on the Palestinian population by the Israeli forces included the use of artillery against residential areas, the destruction of agricultural land, and the considerable damage to, inter alia, water wells and olive and citrus plantations. All those violations, which caused indescribable suffering to the population of the occupied Palestinian territories, could not be justified on military or security grounds and had been committed solely for the purposes of intimidation.

6. He called on the Committee to pronounce on a number of issues, including, first and foremost, the applicability of the Convention in the occupied Palestinian territories and the responsibility of the State of Israel in the Palestinian territories. Meanwhile, however, Israel claimed that those territories were no longer within its jurisdiction and that its responsibility under the Convention did not apply. Various United Nations treaty bodies thought otherwise. Second, he hoped the Committee would urge Israel to put an end to those practices in the occupied territories, which constituted serious breaches of the provisions of the Convention, and in particular to desist from its policy of collective punishment, including the closure of the Palestinian territories. Israel should also be asked to desist from using lethal force and excessive force, and from carrying out extrajudicial executions, and to hold accountable the authors of such executions, who should not enjoy impunity. The State party should also be called on to issue immediate instructions to all the authorities concerned to strictly refrain from using force against ambulances, from impeding the provision of medical relief and from blocking access to hospitals by the sick and injured and pregnant women. Israel should also be exhorted to refrain from shooting at unarmed children. Moreover, the Committee should express its concern about the impact of such policies and other forms of cruel, inhuman or degrading treatment on the whole human rights apparatus, and particularly the erosion of the principle of individual responsibility and the right to due process of law. Lastly, he recommended that the Committee should request the State party to submit an additional report on the situation of human rights in the occupied territories with respect to the provisions of the Convention, since the third periodic report received by the Secretariat in March did not address that subject. By way of conclusion, he quoted a passage from the report of the commission of inquiry, which observed that a commitment to objectivity did not imply a posture of neutrality with respect to the violations of human rights.

7. The CHAIRMAN said that he would not like to see the Committee against Torture, an expert body, turn into a political organ, and asked Mr. El Masry what article his initiative was based on.

8. Mr. EL MASRY said that his request was based on article 19 of the Convention, concerning the submission of reports by States parties.

9. The CHAIRMAN said he saw no objection to Mr. El Masry's request. However, the Committee had not yet considered the report of the State party or given it the opportunity to express itself. Committee members should perhaps give their views on that matter.

10. Mr. CAMARA said he wondered about the competence of the Committee in that regard. Admittedly, there was serious evidence from various sources to suggest that grave violations of human rights and, in particular, of the provisions of the Convention, were now being committed in the occupied territories. The fact nevertheless remained that the Committee must base its actions on irreproachable legal and jurisdictional principles. It was also essential to abide by the principle of adversarial proceedings. He would remind Mr. El Masry that a Committee precedent existed in that regard. During the consideration of the report of Israel in 1998, the Committee had characterized as torture certain acts that the Supreme Court of that country had deemed legal. It had then requested the State party to submit a special report, and the consideration of that report had resulted in a Committee decision. It was crucial for the Committee to adopt a congruent and legally defensible approach. Since the State party had not yet presented its report, the Committee was not in a position to pronounce on the legality of acts currently being committed by Israel.

11. Mr. MAVROMMATIS said that he had listened with great attention to the account of the disturbing and tragic incidents that were occurring in the occupied Palestinian territories and deplored the many innocent victims, most of whom were admittedly Palestinians. Like Mr. Camara, he believed that the Committee against Torture was empowered only to consider allegations that arose from the provisions of the Convention. He was uncertain whether asking the State party to submit a special report would resolve the problems discussed. Furthermore, there were other similarly serious situations all over the world - in his own country, for example - and the Committee should refrain from treating them differently.

12. The CHAIRMAN said that the Committee had received the third periodic report of Israel, and, although it had not planned to do so, could schedule consideration of it at the next session. In accordance with the usual practice, it could then request the State party to submit information on the subjects not covered by the report.

13. Ms. GAER said that no one could deny the tragic nature of the present situation in the occupied territories, and the feelings of hatred, fear and frustration reported by the Mitchell Commission were illustrative. The Special Rapporteur on the Palestinian territories occupied by Israel, the High Commissioner for Human Rights and the Secretary-General of the United Nations had all expressed their concern about the escalation of violence. The situation in the territories was nevertheless very complex. Mr. El Masry's statement presented only one side of the truth. She reminded the members of the Committee that their task was to employ impartiality, objectivity and transparency in the consideration of reports of States parties, and should refrain from politicizing the debate. The Committee's credibility depended on that. She also wondered about the usefulness of a special report under article 19 of the Convention and pointed out that there were armed conflicts in six or seven of the States parties whose reports the Committee had to consider. It would be advisable, in her view, to consider carefully the criteria

the Committee could choose to give priority to the examination of the situation in a particular country. Furthermore, it would be wiser to address human rights violations in the occupied territories in the context of the consideration of the third periodic report of Israel. In that regard, the Special Rapporteur on the question of torture had addressed a letter to the Government of Israel requesting authorization to return to the country to investigate those violations. As to the principle of the applicability of the Convention, the question should be included in the consideration of the report; the Israeli Government had made its position known on that issue and had declared that it was willing to cooperate with the Committee and to provide the information requested on the exercise of its powers and responsibilities. Lastly, the Committee had before it documents from three treaty bodies, whose general observations varied with regard to the question of competence. Those bodies had, however, formulated their observations after the consideration of a report and not before.

14. Mr. RASMUSSEN said he shared members' concerns about the situation in the occupied territories. However, alarming situations existed elsewhere, in Chechnya and East Timor for example, and interest should be taken in them as well. Since the Committee had already received the third periodic report of Israel, the date for considering it could be brought forward.

15. Mr. GONZALEZ POBLETE said all members were aware that the serious events in the occupied territories represented a danger to peace and security. But unlike the political organs of the United Nations, the Committee's mandate was clearly defined in articles 19 to 22 of the Convention. Article 19, the only article applicable in the case in question, provided for an adversarial procedure in which the State party could present its point of view, since the Committee could not pronounce without having permitted the State party to make known its views. Requesting the State party to add more information to a periodic report or to be prepared to answer questions on the application of the Convention in the occupied territories hardly seemed appropriate: the Committee should not depart from its usual practice under article 19 of the Convention. It could perhaps consider establishing an investigative procedure that would precede the periodic reports, but if so, it should be applicable in all cases, and not just exceptional ones. The serious issues raised by Mr. El Masry should be dealt with during the consideration of the third periodic report.

16. Mr. YU Mengjia said that the events in Palestine were of serious concern to the Committee. Raising the question of torture and ill-treatment in the occupied territories was therefore not unwarranted. In view of the arguments presented by Mr. El Masry, the urgent nature of the situation, and the information available concerning the excessive use of force in those territories, it would be wise to change the order of consideration of the periodic reports of States parties and to take up the third periodic report of Israel as soon as possible.

17. Mr. YAKOVLEV said he agreed that, in view of the tragic events described by Mr. El Masry and the complexity of the situation, the matter should be discussed during the consideration of the third periodic report of Israel, as soon as possible. In so doing, the Committee would surely come up against the difficult questions of when, to what extent, and under what conditions the provisions of the Convention could be invoked in the occupied territories against the occupying State. A similar problem had been dealt with by the Committee in a different context, that of an armed insurrection; there, it had been a question of the extent to which acts of torture committed by terrorist groups were the responsibility of one side or the

other. Regrettably, that type of local conflict was becoming more common, and was one the Committee would be faced with more and more. It should therefore make ready and should consider the criteria that would apply in response to the question of whether the Convention was applicable when one part of the territory was occupied by another power. It was a complex question, difficult to answer categorically, and precedents must be sought. Establishing whether or not the provisions of the Convention would extend to such an occupied territory would not be an easy task, and that was even truer of other instruments which were much broader in scope. After deciding the question in not too simplistic a way, the Committee would then need to respond to a still more delicate matter, namely, under what specific conditions a State occupying another State could be held responsible under the Convention for everything that happened in the occupied territory: whether the normal legal system was applicable, or whether it was a theatre of operations in which responsibilities were constantly changing (military jurisdiction, special judicial arrangements, zone of military operations, etc.). With regard to Palestine, if the Committee considered that the State party could legitimately be required to bear the responsibility for what was happening in the occupied territories, it would then have to establish whether the provisions of the Convention, and particularly articles 1 and 16, had or had not been violated.

18. In view of those difficulties, the Committee should reflect on its course of action, for example by asking the Secretariat to provide documentation regarding the problems in the occupied territories, and examining the discussions of other bodies on that matter, although not necessarily following their lead. Equipped with those theoretical tools, the Committee would be in a position to raise specific questions with the Israeli delegation during the consideration of its periodic report.

19. Mr. HENRIQUES GASPAR, said he too was deeply troubled by the human rights violations being committed in that part of the world and wholeheartedly endorsed Mr. Yakovlev's remarks. Once the question was raised within the Committee, it became a legal issue and must be handled as such. To assert that the case should not be considered because others also existed was an argument of a political nature; the Committee should consider those other cases as well, but from the standpoint of international law. As for the Committee's competence in the case at hand, article 19 of the Convention was the only relevant article, and the first question to be asked was the very complex one Mr. Yakovlev had skilfully articulated, that of jurisdiction. The Committee had a number of specific elements concerning the exercise of all powers in the occupied territories to determine whether jurisdiction existed under international law, in the case in point, under article 2 of the Convention, which used the phrase "any territory under its jurisdiction".

20. Once that first question was resolved, the next question was that of the Committee's competence, which should be considered in the light of article 19 of the Convention: either the Committee could fulfil its mandate during the consideration of periodic reports, or it could deem that the situation was sufficiently serious and urgent, according to the information available, to call for the submission of a supplementary report, as provided for in paragraph 1 of article 19.

21. A procedural question then arose, as other members of the Committee had pointed out. The State party in question had already submitted its report, which could therefore be considered at the next session. It would be an excellent opportunity for adversarial dialogue, and the

Committee should prepare by pondering the problem of Israel's jurisdiction over the occupied territories. It must be well versed in the specific problems that Israel's report was likely to raise, from the standpoint both of the facts and of international law. As Mr. Yakovlev had emphasized, the Committee must assemble clear legal arguments in order to raise the question of jurisdiction with the State party and must then request specific information on what was occurring in the occupied territories.

22. The CHAIRMAN recalled that, during the consideration of Israel's previous reports, it had been acknowledged that, when a State used force against anyone within its jurisdiction, it must justify its actions. That principle had been raised with regard to the interrogation of prisoners, but might also be applicable to events in any territory in which a State wielded power. If the Committee therefore decided to ask Israel to describe what was happening in the occupied territories, it would fall to that State to justify resorting to force in those territories, to invoke the legal arguments it deemed appropriate and to present facts to support its legal argument. In addition, requesting the State to justify its position in no way prevented the Committee from asking the Secretariat to supply it with any information that might assist it in its task.

23. Ms. GAER said that, in addition to cases of occupation, there were a number of situations in which the jurisdiction issue was quite complex. There were also many humanitarian law and human rights instruments and texts. To perform its task in the best possible way, the Committee should request the Senior Legal Officer to clarify the matter of jurisdiction and other legal points mentioned, in particular by Mr. Yakovlev.

24. Mr. EL MASRY said he endorsed the Chairman's view that the State party should be allowed to set out its arguments first. And it would certainly be useful to ask the assistance of the Secretariat in gathering relevant documentation.

25. With reference to the points made by Mr. Yakovlev, the State's responsibility for acts committed by Israeli military officers or agents was incontestable, whether or not they had been committed in the occupied territories. To cite a precedent, following acts committed by Canadian personnel stationed in Somalia, Canada had given over a large portion of its periodic report to those incidents.

26. Ms. Gaer had implicitly raised the question whether it was an armed conflict. The report of the commission of inquiry unambiguously affirmed that there was no international conflict occurring in the occupied territories, since Palestine did not yet fulfil the criteria allowing it fully to be considered a State. Nor was it a question of internal armed conflict, since the reactions were by unorganized demonstrators and not planned actions by organized armed groups.

27. The Committee seemed to agree that the report of Israel should be examined at the next session. Since that report did not cover the occupied territories, the State party should immediately be requested to provide information on the occupied territories under its jurisdiction, as provided for in paragraph 1 of article 19, as Mr. Henriques Gaspar had wisely pointed out. There was no doubt that the Convention applied to the three occupied Palestinian territories that Israel effectively controlled; that control was exclusive in the first case and was exercised in conjunction with the Palestinian police in the second case; in the third territory, the Palestinian authorities only exercised their authority at the municipal level, since Israel

controlled land, air and sea. Under the Oslo Accords, Israel had retained the responsibility for international affairs and the defence of the territories, and in resolution 1322 (2000) of 7 October 2000, the Security Council had expressly designated Israel as the occupying power of the territories occupied on 6 June 1967.

28. Mr. YAKOVLEV said Mr. El Masry's arguments were convincing and he considered that the Committee could use them to ask the State party for information on the behaviour of its army in the occupied territories.

29. Mr. MAVROMMATIS said it was essential to consult the Legal Liaison Office on the matter of jurisdiction since the discussion demonstrated that the Committee was not in a position to resolve it. Furthermore, he did not think it was wise to ask the State party for a supplementary report on the situation in the occupied territories. If the Israeli Government did not agree to that request, the Committee would be obliged to defer consideration of the report to a later session. The Committee should simply inform the Israeli authorities that the delegation would be asked questions on the situation in the occupied territories.

30. Mr. EL MASRY proposed that the Committee should send a letter to the State party mentioning the numerous allegations of violations of the Convention in the occupied territories.

31. Ms. GAER said that sending a letter of that type would mean the Committee had reached a conclusion on the matter of jurisdiction before having heard the State party speak on that matter. In her view, sending a letter to the Israeli Government was not necessary, because it would surely learn about the Committee's discussions from the press release and the summary record of the present meeting. If the Committee nonetheless decided to send a letter, it should simply state that it would consider the application of the Convention in the territories under the jurisdiction of the State party, without specifying whether or not it considered that the occupied territories constituted part of those territories.

32. Mr. HENRIQUES GASPAR, supported by Mr. EL MASRY, said that the Committee had enough lawyers to determine on its own whether the occupied territories were under the State party's jurisdiction, without needing to consult the Legal Liaison Office. It would be enough to ask the Secretariat to gather the relevant documentation so that the Committee could make its own decision.

33. Mr. MAVROMMATIS said that he disagreed. In his view, it was not the role of the Committee, which incidentally had three members who were not lawyers, to settle such a delicate, complex matter of international law.

34. The CHAIRMAN said that the opinion of the Legal Office was simply additional information, and would not prevent the Committee from taking an opposing view, if necessary.

35. Mr. GONZALEZ POBLETE said that the Committee was not bound by information it received, and that the decision ultimately was its own.

36. The CHAIRMAN proposed that the members should vote by show of hands on the question of whether the Legal Office should be asked to give an opinion.

37. The proposal was adopted.

38. The CHAIRMAN, noting that five out of nine members of the Committee had voted in favour, said that the Committee thus decided to request the Legal Liaison Office to give its opinion on the matter of Israel's jurisdiction over the occupied territories.

39. Noting that all members seemed to accept the idea that the third periodic report of Israel should be considered at the session in November 2001, he said that the Committee must also decide whether it was appropriate to send a letter to the Israeli Government and, if so, must determine its substance.

40. Mr. HENRIQUES GASPAR said that sending a letter of the type proposed by Ms. Gaer would serve no purpose, since the State party could well reply that the report contained all the relevant information.

41. Mr. GONZALEZ POBLETE, supported by Mr. YAKOVLEV, said that the Secretariat should send to the State party the same letter it normally sent to all States parties to invite them to participate in the consideration of their reports.

42. Mr. MAVROMMATIS said he feared that such a letter would not be sufficiently clear with regard to the Committee's expectations and that the delegation might, during the consideration of the report, refuse to reply to members' questions on the grounds that they had been unable to prepare beforehand. He therefore proposed the letter should specify that the delegation would be expected to answer questions on the situation in the occupied Palestinian territories in Spring 2001. As for all States parties, the Secretariat could attach to the letter any documents from non-governmental organizations (NGOs), namely those Mr. El Masry had received about human rights violations in the occupied territories.

43. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee approved Mr. Mavrommatis' proposal, and requested the Secretariat to send to the State party the usual letter of invitation along with documents from NGOs, informing it that the delegation should be prepared to discuss the issues raised therein.

44. It was so decided.

The public part of the meeting rose at 12.25 p.m.